

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL MENDEZ, :
Plaintiff, : C.A. No. 1:05-cv-00035
VS : (Judge McLaughlin)
PENNSYLVANIA DEPT. OF :
CORRECTIONS, PRISON HEALTH :
SERVICES, INC., DR. MARK BAKER and :
DR. FRAIDER, :
Defendants, :
: :
:

PLAINTIFF'S RESPONSE TO THE DEFENDANT DR.
FRAIDER MOTION TO DISMISS FILED 10/13/2005
and PLAINTIFF'S MOTION TO STRIKE AND DISMISS
AFORESAID MOTION OF DR. FRAIDER, SUBMITTED
IN GOOD FAITH, IN FORMA PAUPERIS

AND NOW, comes SAMUEL MENDEZ, in forma pauperis, pursuant to legal procedures, herein after known as the plaintiff in this legal cause of action. The plaintiff files this response and motion to strike and dismiss defendant DR. FRAIDER motion to dismiss filed in this case on 10/13/05 and in the support of this motion he surrenders the following.

(1). That the aforesaid motion to dismiss filed by defendant DR. FRAIDER, should be striked and dismissed as it fails to conform to the statutory mandates of 28 U.S.C. Section 1746.

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(2). That the statutory mandates of 28 U.S.C. Section 1746 requires that a verification be attached to any and all pleadings, answers, motions, complaints and other legal documents that isn't necessary of record and 28 U.S.C. Section 1746 requires that such pleadings be made "under the penalty of perjury". In this case there was no such oath given by the defendant, there was no verification signed and verified by the defendant, and thus the motion to dismiss filed by such defendant DR. FRAIDER is null and void and must be striked and dismissed as it is NON OBSTANTE and meaningless thus invalid.

(3). That the verification and the oath in question mandated by 28 U.S.C. Section 1746 have not been met in this case by the defendant DR. FRAIDER, and thus relief must be given to the plaintiff and defendant DR. FRAIDER'S motion to dismiss must be striked and dismissed in the interest of justice.

WHEREFORE, the plaintiff respectfully moves the honorable Court that an order will issue forthwith, ordering that the Motion To Dismiss filed by defendant DR. FRAIDER be hereby STRIKED and DISMISSED for failure to conform to 28 U.S.C. Section 1746.

DATE: 10/31/05 Respectfully Submitted/S/ Samuel Mench
Plaintiff

Verification.

SAMUEL MENDEZ, under the penalty of perjury do hereby declare and state, that he is the plaintiff named in this foregoing legal action to The United States District Court For The Western District Of Pennsylvania, and state's that he has read the same, and that the same is true and correct to the best of his own knowledge and beliefs. That pursuant to 28 U.S.C. Section 1746 I declare that the foregoing is true and correct and such declaration is under the penalty of perjury.

Executed this 31st day of October 2005

Respectfully Submitted

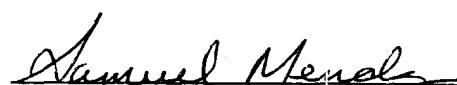

Plaintiff

PROOF OF SERVICE .

SAMUEL MENDEZ, do hereby declare under the penalty of perjury, that he has this day caused to be served upon the parties listed below a true and correct copy of this legal action to The U.S. District Court For The Western District Of Pennsylvania by placing such copy into the U.S. Mail addressed as follows.

TO: ELIZABETH M.YANELLI,ESQUIRE.) FRANCIS J.KLEMENSIC
PIETRAGALLO,BOSICK & GORDON	120 West Tenth Street
One Oxford Centre) Erie, Pennsylvania 16501-
38th Floor	1461
Pittsburgh,PA 15219)

SAMUEL H.FOREMAN, ESQUIRE
WEBER GALLAGHER(GALLAGHER)SIMPSON STAPLETON
FIRES & NEWBY
603 Stanwix Street
Suite 1450,14 Floor
Two Gateway Center
Pittsburgh,PA 15222


SAMUEL MENDEZ-NO.CY-7322
801 Butler Pike
Mercer,PA 16137

RODNEY M. TORBIC
SENIOR DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
6th.Floor,Manor Complex,564 Forbes Avenue
Pittsburgh,PA 15219

DATE: 10/31/05